

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 261

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

AN ACT

RELATING TO DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING
LIQUOR OR DRUGS; INCREASING PENALTIES FOR CERTAIN DWI
OFFENDERS; AMENDING A SECTION OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 66-8-102 NMSA 1978 (being Laws 1953,
Chapter 139, Section 54, as amended) is amended to read:

"66-8-102. PERSONS UNDER THE INFLUENCE OF INTOXICATING
LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE
OF INTOXICATING LIQUOR OR DRUGS--PENALTY.--

A. It is unlawful for a person who is under the
influence of intoxicating liquor to drive a vehicle within this
state.

B. It is unlawful for a person who is under the
influence of any drug to a degree that renders him incapable of

1 safely driving a vehicle to drive a vehicle within this state.

2 C. It is unlawful for a person who has an alcohol
3 concentration of eight one hundredths or more in his blood or
4 breath to drive a vehicle within this state.

5 D. Aggravated driving while under the influence of
6 intoxicating liquor or drugs consists of a person who:

7 (1) has an alcohol concentration of sixteen
8 one hundredths or more in his blood or breath while driving a
9 vehicle within this state;

10 (2) has caused bodily injury to a human being
11 as a result of the unlawful operation of a motor vehicle while
12 driving under the influence of intoxicating liquor or drugs; or

13 (3) refused to submit to chemical testing, as
14 provided for in the Implied Consent Act, and in the judgment of
15 the court, based upon evidence of intoxication presented to the
16 court, was under the influence of intoxicating liquor or drugs.

17 E. ~~Every~~ A person under first conviction pursuant
18 to this section shall be punished, notwithstanding the
19 provisions of Section 31-18-13 NMSA 1978, by imprisonment for
20 not more than ninety days or by a fine of not more than five
21 hundred dollars (\$500), or both; provided that if the sentence
22 is suspended in whole or in part or deferred, the period of
23 probation may extend beyond ninety days but shall not exceed
24 one year. Upon a first conviction pursuant to this section, an
25 offender may be sentenced to not less than forty-eight hours of

1 community service or a fine of three hundred dollars (\$300).
2 The offender shall be ordered by the court to participate in
3 and complete a screening program described in Subsection ~~[H]~~ I
4 of this section and to attend a driver rehabilitation program
5 for alcohol or drugs, also known as a "DWI school", approved by
6 the bureau and also may be required to participate in other
7 rehabilitative services as the court shall determine to be
8 necessary. In addition to those penalties, when an offender
9 commits aggravated driving while under the influence of
10 intoxicating liquor or drugs, the offender shall be sentenced
11 to not less than forty-eight consecutive hours in jail. If an
12 offender fails to complete, within a time specified by the
13 court, any community service, screening program, treatment
14 program or DWI school ordered by the court, the offender shall
15 be sentenced to not less than an additional forty-eight
16 consecutive hours in jail. Any jail sentence imposed pursuant
17 to this subsection for failure to complete, within a time
18 specified by the court, any community service, screening
19 program, treatment program or DWI school ordered by the court
20 or for aggravated driving while under the influence of
21 intoxicating liquor or drugs shall not be suspended, deferred
22 or taken under advisement. On a first conviction pursuant to
23 this section, any time spent in jail for the offense prior to
24 the conviction for that offense shall be credited to any term
25 of imprisonment fixed by the court. A deferred sentence

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1 pursuant to this subsection shall be considered a first
2 conviction for the purpose of determining subsequent
3 convictions.

4 F. Except as provided in Subsection G of this
5 section, a second or third conviction pursuant to this section
6 shall be punished, notwithstanding the provisions of Section
7 31-18-13 NMSA 1978, by imprisonment for not more than three
8 hundred sixty-four days or by a fine of not more than one
9 thousand dollars (\$1,000), or both; provided that if the
10 sentence is suspended in whole or in part, the period of
11 probation may extend beyond one year but shall not exceed five
12 years. Notwithstanding any provision of law to the contrary
13 for suspension or deferment of execution of a sentence:

14 (1) upon a second conviction, [~~each~~] an
15 offender shall be sentenced to a jail term of not less than
16 seventy-two consecutive hours, forty-eight hours of community
17 service and a fine of five hundred dollars (\$500). In addition
18 to those penalties, when an offender commits aggravated driving
19 while under the influence of intoxicating liquor or drugs, the
20 offender shall be sentenced to a jail term of not less than
21 ninety-six consecutive hours. If an offender fails to
22 complete, within a time specified by the court, any community
23 service, screening program or treatment program ordered by the
24 court, the offender shall be sentenced to not less than an
25 additional seven consecutive days in jail. A penalty imposed

1 pursuant to this paragraph shall not be suspended or deferred
2 or taken under advisement; and

3 (2) upon a third conviction, an offender shall
4 be sentenced to a jail term of not less than thirty consecutive
5 days and a fine of seven hundred fifty dollars (\$750). In
6 addition to those penalties, when an offender commits
7 aggravated driving while under the influence of intoxicating
8 liquor or drugs, the offender shall be sentenced to a jail term
9 of not less than sixty consecutive days. If an offender fails
10 to complete, within a time specified by the court, any
11 screening program or treatment program ordered by the court,
12 the offender shall be sentenced to not less than an additional
13 sixty consecutive days in jail. A penalty imposed pursuant to
14 this paragraph shall not be suspended or deferred or taken
15 under advisement.

16 G. Upon a third conviction for an offense committed
17 within three years of two prior convictions pursuant to this
18 section, an offender is guilty of a fourth degree felony, as
19 provided in Section 31-18-15 NMSA 1978, and shall be sentenced
20 to a jail term of not less than six months, which shall not be
21 suspended, deferred or taken under advisement.

22 [~~G.~~] H. Upon a fourth or subsequent conviction
23 pursuant to this section, an offender is guilty of a fourth
24 degree felony, as provided in Section 31-18-15 NMSA 1978, and
25 shall be sentenced to a jail term of not less than six months,

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1 which shall not be suspended or deferred or taken under
2 advisement.

3 ~~[H-]~~ I. Upon any conviction pursuant to this
4 section, an offender shall be required to participate in and
5 complete, within a time specified by the court, an alcohol or
6 drug abuse screening program and, if necessary, a treatment
7 program approved by the court. The requirement imposed
8 pursuant to this subsection shall not be suspended, deferred or
9 taken under advisement.

10 ~~[I-]~~ J. Upon a first conviction for aggravated
11 driving while under the influence of intoxicating liquor or
12 drugs pursuant to the provisions of Subsection D of this
13 section, as a condition of probation, an offender shall be
14 required to have an ignition interlock device installed and
15 operating for a period of one year on all motor vehicles driven
16 by the offender, pursuant to rules adopted by the bureau.
17 Unless determined by the sentencing court to be indigent, the
18 offender shall pay all costs associated with having an ignition
19 interlock device installed on the appropriate motor vehicles.
20 If an offender drives a motor vehicle that does not have an
21 ignition interlock device installed on the motor vehicle, the
22 offender may be in violation of the terms and conditions of his
23 probation.

24 ~~[J-]~~ K. Upon a first conviction for driving while
25 under the influence of intoxicating liquor or drugs pursuant to

1 the provisions of Subsection A, B or C of this section, as a
2 condition of probation, an offender may be required to have an
3 ignition interlock device installed and operating for a period
4 of one year on all motor vehicles driven by the offender,
5 pursuant to rules adopted by the bureau. Unless determined by
6 the sentencing court to be indigent, the offender shall pay all
7 costs associated with having an ignition interlock device
8 installed on the appropriate motor vehicles. If an offender
9 drives a motor vehicle that does not have an ignition interlock
10 device installed on the motor vehicle, the offender may be in
11 violation of the terms and conditions of his probation.

12 ~~[K.]~~ L. Upon any subsequent conviction pursuant to
13 this section, as a condition of probation, a subsequent
14 offender shall be required to have an ignition interlock device
15 installed and operating for a period of at least one year on
16 all motor vehicles driven by the subsequent offender, pursuant
17 to rules adopted by the bureau. Unless determined by the
18 sentencing court to be indigent, the subsequent offender shall
19 pay all costs associated with having an ignition interlock
20 device installed on the appropriate motor vehicles. If a
21 subsequent offender drives a motor vehicle that does not have
22 an ignition interlock device installed on the motor vehicle,
23 the subsequent offender may be in violation of the terms and
24 conditions of his probation.

25 ~~[L.]~~ M. In the case of a first, second or third

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1 offense under this section, the magistrate [~~court has~~] courts
2 have concurrent jurisdiction with district courts to try the
3 offender.

4 N. In the case of a third offense within three
5 years of two prior convictions as provided in Subsection G of
6 this section, district courts have exclusive jurisdiction to
7 try the offender.

8 [~~M-~~] O. A conviction pursuant to a municipal or
9 county ordinance in New Mexico or a law of any other
10 jurisdiction, territory or possession of the United States that
11 is equivalent to New Mexico law for driving while under the
12 influence of intoxicating liquor or drugs, and that prescribes
13 penalties for driving while under the influence of intoxicating
14 liquor or drugs, shall be deemed to be a conviction pursuant to
15 this section for purposes of determining whether a conviction
16 is a second or subsequent conviction.

17 [~~N-~~] P. In addition to any other fine or fee
18 [~~which~~] that may be imposed pursuant to the conviction or other
19 disposition of the offense under this section, the court may
20 order the offender to pay the costs of any court-ordered
21 screening and treatment programs.

22 [~~Q-~~] Q. As used in this section:

23 (1) "bodily injury" means an injury to a
24 person that is not likely to cause death or great bodily harm
25 to the person, but does cause painful temporary disfigurement

1 or temporary loss or impairment of the functions of any member
2 or organ of the person's body; and

3 (2) "conviction" means an adjudication of
4 guilt and does not include imposition of a sentence."

5 Section 2. APPLICABILITY.--The provisions of this 2003
6 act are applicable to persons convicted for driving while under
7 the influence of intoxicating liquor or drugs, as provided in
8 Section 66-8-102 NMSA 1978, on or after July 1, 2003.

9 Section 3. EFFECTIVE DATE.--The effective date of the
10 provisions of this act is July 1, 2003.